Michigan State University
Policy on Relationship Violence & Sexual Misconduct
January 3, 2020

Table of Contents

I. Introduction............................................................................................................................. 4
II. Applicability and Prohibition............................................................................................ 4
III. Title IX Coordinator ......................................................................................................... 5
IV. Office of Institutional Equity (OIE).................................................................................. 6
V. Roles ....................................................................................................................................... 6
VI. Prohibited Conduct and Definitions.................................................................................. 8
   A. Relationship Violence....................................................................................................... 8
      1. Domestic Violence...................................................................................................... 9
      2. Dating Violence.......................................................................................................... 9
   B. Stalking ............................................................................................................................ 10
   C. Sexual Misconduct......................................................................................................... 10
      1. Sexual Harassment..................................................................................................... 10
      2. Sexual Violence ....................................................................................................... 12
      3. Sexual Exploitation................................................................................................. 13
   D. Consent .......................................................................................................................... 14
   E. Incapacitation................................................................................................................ 14
VII. First Amendment Protections ......................................................................................... 16
VIII. Resources and Assistance ............................................................................................ 16
IX. Privacy and Confidentiality ............................................................................................... 17
   A. Privacy .......................................................................................................................... 17
   B. Confidentiality ............................................................................................................. 17
X. Reporting Procedures......................................................................................................... 17
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Reporting Relationship Violence, Stalking, or Sexual Misconduct</td>
<td>17</td>
</tr>
<tr>
<td>1.</td>
<td>Reporting to Confidential Campus Resources</td>
<td>18</td>
</tr>
<tr>
<td>2.</td>
<td>Reporting to a Sexual Assault Forensic Examiner Program</td>
<td>19</td>
</tr>
<tr>
<td>3.</td>
<td>Reporting to OIE and the MSU Police Department</td>
<td>19</td>
</tr>
<tr>
<td>B.</td>
<td>Contact Information: Filing Reports</td>
<td>19</td>
</tr>
<tr>
<td>C.</td>
<td>Contact Information: Confidential and Private Resources</td>
<td>20</td>
</tr>
<tr>
<td>D.</td>
<td>Other Important Campus Resources</td>
<td>21</td>
</tr>
<tr>
<td>E.</td>
<td>Employee Reporting Obligations, Confidentiality, and Safety Concerns</td>
<td>22</td>
</tr>
<tr>
<td>F.</td>
<td>Confidential Communications</td>
<td>23</td>
</tr>
<tr>
<td>G.</td>
<td>Private Communications</td>
<td>23</td>
</tr>
<tr>
<td>H.</td>
<td>Non-Personally Identifiable Information</td>
<td>24</td>
</tr>
<tr>
<td>I.</td>
<td>Reports to Mandatory Reporters</td>
<td>24</td>
</tr>
<tr>
<td>1.</td>
<td>Failure to Report</td>
<td>25</td>
</tr>
<tr>
<td>2.</td>
<td>Requests for Confidentiality or Anonymity</td>
<td>26</td>
</tr>
<tr>
<td>J.</td>
<td>Reports from Witnesses &amp; Bystander Intervention</td>
<td>28</td>
</tr>
<tr>
<td>K.</td>
<td>Public Awareness Events</td>
<td>28</td>
</tr>
<tr>
<td>L.</td>
<td>Third Party and Anonymous Complaints</td>
<td>28</td>
</tr>
<tr>
<td>M.</td>
<td>Amnesty for Drug or Alcohol Possession and Consumption Violations</td>
<td>29</td>
</tr>
<tr>
<td>N.</td>
<td>Relationship Violence, Stalking, or Sexual Misconduct by Third Parties</td>
<td>29</td>
</tr>
<tr>
<td>O.</td>
<td>Outside Options for Resolution of Complaints</td>
<td>30</td>
</tr>
<tr>
<td>XI.</td>
<td>Complaints or Grievances Related to MSU HealthTeam</td>
<td>31</td>
</tr>
<tr>
<td>XII.</td>
<td>University Resolution of Complaints and Reports</td>
<td>32</td>
</tr>
<tr>
<td>A.</td>
<td>Overview</td>
<td>32</td>
</tr>
<tr>
<td>B.</td>
<td>Sexual History of the Parties</td>
<td>33</td>
</tr>
<tr>
<td>C.</td>
<td>Law Enforcement Investigations</td>
<td>34</td>
</tr>
<tr>
<td>D.</td>
<td>Preservation of Evidence</td>
<td>34</td>
</tr>
<tr>
<td>E.</td>
<td>Supportive and Interim Measures</td>
<td>35</td>
</tr>
<tr>
<td>F.</td>
<td>Advisors or Support Persons</td>
<td>37</td>
</tr>
<tr>
<td>G.</td>
<td>Formal Resolution of Complaints and Reports</td>
<td>38</td>
</tr>
<tr>
<td>1.</td>
<td>Explanation of Rights and Options</td>
<td>38</td>
</tr>
<tr>
<td>2.</td>
<td>Investigating Details</td>
<td>38</td>
</tr>
</tbody>
</table>
3. Gathering & Reviewing Evidence ................................................................. 38
5. Conclusion of Investigative Process ............................................................... 40
6. Determination of Credibility Issue - Hearing Request ................................. 40
7. No Credibility Issue or Hearing Not Requested ............................................. 40
8. Credibility Issue - Hearing Requested ......................................................... 40
9. Decisions/Findings ....................................................................................... 42
10. Appeals and Sanctions for Students .............................................................. 43
11. Appeals and Discipline for Employees ......................................................... 44
12. Complaints against Students and Employees .............................................. 44
13. Additional Standards of Review for Complaints Against Employees .......... 45
14. Sanctions and Remedies ............................................................................. 45
15. Investigations Without a Complaint ............................................................. 45
16. New Evidence Discovered After Time to Appeal ........................................ 46
H. Informal Resolution and/or Administrative Action ....................................... 46
XIII. Privacy of Investigations ........................................................................... 47
XIV. Conflicts of Interest .................................................................................. 47
XV. Retaliation .................................................................................................. 47
XVI. Participation .............................................................................................. 47
XVII. Unit Administrator Responsibilities ......................................................... 48
XVIII. False Complaints ................................................................................... 48
XIX. Additional Information and Resources ..................................................... 49
   A. Education ................................................................................................... 49
   B. Other Relevant University Policies ............................................................ 49
   C. Other Helpful Documents ......................................................................... 49
   D. Online Resources ..................................................................................... 50
XX. Annual Crime Reporting & Timely Warnings ............................................. 50
XXI. Policy History ............................................................................................ 50
XXII. Appendices ............................................................................................ 51
I. Introduction

Michigan State University is committed to maintaining a learning and working environment for all students, faculty, and staff that is fair, humane, and responsible - an environment that supports career and educational advancement on the basis of job and academic performance. Relationship violence, stalking, and sexual misconduct subvert the University’s mission and offend the University community’s integrity. Relationship violence, stalking, and sexual misconduct are not tolerated at Michigan State University.

The University will respond to complaints, reports, or information about incidents of relationship violence, stalking, and sexual misconduct to stop the prohibited conduct, eliminate any hostile environment, take steps to prevent the recurrence of the prohibited conduct, and address any effects on campus or in any University programs and activities regardless of location.

The purpose of the Relationship Violence and Sexual Misconduct (RVSM) Policy is to define relationship violence, stalking, and sexual misconduct, describe the process for reporting violations of the Policy, outline the process used to investigate and adjudicate alleged violations of the Policy, and identify resources available to members of the University community who are involved in an incident of relationship violence, stalking, or sexual misconduct. The Policy will be reviewed annually at a minimum, but may be updated more frequently as needed.

II. Applicability and Prohibition

Title IX of the Educational Amendments of 1972 prohibits sex discrimination at institutions of higher education. Section 1557 of the Affordable Care Act (ACA) prohibits sex discrimination in applicable health programs and activities. The University prohibits sex and gender discrimination, relationship violence, and stalking in any of its programs or activities. This Policy and its related procedures apply to complaints alleging all forms of sex and gender discrimination (including sexual harassment, gender-based harassment, sexual assault, sexual violence, and other forms of sexual misconduct) against employees, students, and third parties.

This Policy applies to all members of the University community - faculty, staff, and students - regardless of gender or any other characteristic protected under the University’s Anti-Discrimination Policy. Members of the University community shall not engage in relationship violence, stalking, or sexual misconduct against employees, students, or third parties. Persons

---

1 For more detail on MSU’s policy prohibiting gender discrimination, please review MSU’s Anti-Discrimination Policy, which can be accessed at www.oie.msu.edu.

2 Therefore, the sex of the claimant and respondent is irrelevant under the Policy.

3 A third party is an individual who is not a member of the University community (faculty, staff, or student). Examples of third parties include visitors, guests, contractors, alumni, or students from other institutions.
who do so are subject to disciplinary action, up to and including discharge for employees and dismissal for students. The University also prohibits relationship violence, stalking, and sexual misconduct by third parties towards members of the University community when the third party has been brought into contact with the member of the University community through a University program or activity. Although individuals who are not students or employees of the University are not subject to discipline under the University’s internal processes, the University will take prompt, corrective action to eliminate relationship violence, stalking, and sexual misconduct and prevent its recurrence in those circumstances. The University prohibits retaliation, including retaliatory harassment, against individuals who report relationship violence, stalking, or sexual misconduct or who participate in the University's handling of such reports.

This Policy applies to all forms of relationship violence, stalking, and sexual misconduct committed by or against a member of the University community when:

- The conduct occurs on campus;
- The conduct occurs off-campus in the context of University employment, education, or research programs or activities, including, but not limited to, MSU HealthTeam, MSU-sponsored study abroad, internships, graduate/professional programs, intercollegiate athletics, or other affiliated programs; and/or
- The conduct occurs off-campus outside the context of a University program or activity but has continuing adverse effects on campus or in any University program or activity.

The University does not have jurisdiction to investigate reported incidents involving members of the University community that occurred prior to the individual being enrolled at or employed by the University when the incident did not occur on campus or in connection with a University program, activity, or employment. The University will provide resources and assistance to support the academic or employment success of any individual reporting relationship violence, stalking, or sexual misconduct regardless of the University’s jurisdiction to investigate.

III. Title IX Coordinator

The University’s Title IX Coordinator oversees the University’s gender equity work to ensure compliance with Title IX, including its grievance procedures, education/prevention efforts, and training. The Title IX Coordinator reviews information about relationship violence, stalking, and sexual misconduct complaints to identify and address any patterns or systemic problems that arise during the review of such complaints. The Title IX Coordinator is available to meet with individuals as needed.

---

4 Examples of corrective action may include, but are not limited to, discontinuing affiliation with an individual/organization, issuing criminal trespass restrictions for certain campus locations, and/or targeted or broad-based educational programming or training.
any member of the University community or campus organization that would like to discuss the University’s Title IX compliance or work involving matters of sex discrimination, including sexual and gender-based harassment, assault, or violence.

Robert Kent  
Office for Civil Rights and Title IX Education and Compliance  
408 W. Circle Dr. Suite 105, Olds Hall  
East Lansing MI 48824  
(517) 353-3922  
oie@msu.edu

IV. Office of Institutional Equity (OIE)

The Office of Institutional Equity (OIE) is responsible for the University’s compliance with federal and state laws and University policies and procedures regarding discrimination, harassment, relationship violence, stalking, and sexual misconduct. OIE is responsible for investigating all allegations of prohibited discrimination and harassment, including relationship violence, stalking, and sexual misconduct. OIE also collaborates with other campus offices to encourage best practices to promote a culture of inclusion. The Title IX Coordinator or their designee is available to advise any individual, including a claimant, respondent, or third party, about University and community resources and reporting options, and they are available to provide assistance to any University employee regarding how to respond appropriately to a report of relationship violence, sexual misconduct, or stalking.

Office of Institutional Equity  
408 W. Circle Dr, Suite 4, Olds Hall  
East Lansing MI 48824  
(517) 353-3922  
oie@msu.edu

V. Roles

Individuals play a number of important roles within the University’s RVSM investigation and adjudication process. The following are descriptions of each of those roles within the process.

Claimant: A person who may have been subjected to prohibited conduct regardless of whether that person makes a report or seeks action under this Policy. This term does not imply pre-judgment concerning whether the person was subjected to prohibited conduct. In cases where there is no identified claimant or claimants willing to participate in the
investigation process, the University may be named as the claimant if the Title IX Coordinator or their designee determines that an investigation is appropriate.

**Respondent:** A person, registered student organization (RSO), or entity (e.g., department, college, or office) that has been accused of prohibited conduct. This term does not imply pre-judgment concerning whether the person, RSO, or entity committed the prohibited conduct.

**Witnesses:** A person believed to have information regarding an incident which may violate this Policy, including but not limited to someone present when the incident occurred, someone the claimant or respondent communicated with about the incident, and/or someone who may have information relevant to the incident. Witness participation in the investigatory and adjudicatory processes is voluntary. While MSU encourages witnesses to cooperate with the investigative and adjudicatory processes, MSU cannot compel or require witnesses to participate.

**Investigator:** A professionally trained staff member in OIE, or a professionally trained outside expert under the supervision of the Title IX Coordinator or their designee, who conducts an impartial, fair, and unbiased investigation.

**Resolution Officer:** In instances where a hearing is held, as explained in Section XI.G., the Resolution Officer conducts and presides over the hearing.

**Reporter:** A person who communicates a concern of prohibited conduct to the University. A reporter need not be a claimant.

**Mandatory Reporter:** A University employee identified in Section X.I. who is required to report relationship violence, stalking, and sexual misconduct to the University.

**Human Resources/Academic Human Resources:** In all cases where there has been a determination that an employee violated the Policy, regardless of whether a hearing occurs, the Office of Employee Relations (OER) or Academic Human Resources (AHR) is responsible for advising unit administrators regarding the imposition of appropriate disciplinary action. Unit administrators confer with OER/AHR prior to imposing disciplinary action.

**Equity Review Officer:** The Equity Review Officer (ERO) is a neutral individual appointed to adjudicate appeals.

**Dean of Students and Assistant Provost for Academic Standards and Student Conduct (Dean of Students):** In all cases where there has been a determination a student violated the Policy, regardless of whether a hearing occurs, the Dean of Students or their designee is responsible for determining sanctions.
VI. Prohibited Conduct and Definitions

“Relationship violence” and “sexual misconduct” are broad terms that encompass sexual harassment, sexual violence, domestic violence, dating violence, and stalking.

A. Relationship Violence

“Relationship violence” is a broad term that encompasses domestic violence, dating violence, and stalking. Definitions for these terms are provided below.

Relationship violence can consist of a single act of violence or a pattern of violent acts that includes, but is not limited to, sexual or physical abuse. While relationship violence can include non-physical tactics, including ongoing emotional, psychological, fiscal abuse, and control, this Policy addresses only physical acts of relationship violence. Individuals experiencing non-physical/sexual abuse should seek help from campus resources, regardless of where the abuse occurred, and may wish to review the General Student Regulations or relevant employee handbook to determine if an incident is within the purview of that Policy.

When analyzing reports of relationship violence, the following factors are considered:

- The existence of any power differential between the parties, such as a position of authority or influence;
- The existence of fear by either party of the other party resulting from specific actions taken by the other party intended to induce fear; and
- The context of the behavior (e.g., a history of coercive controlling tactics by one party over the other; intended and actual outcome of their behavior on the other; one party acting in self-defense or in response to recent violations, abuse, threats or coercive tactics; and/or out of fear of imminent harm or danger).

This Policy recognizes that individuals have the right to defend themselves or another person under certain circumstances. If an individual indicates they acted in self-defense, the University will use all of the available, relevant evidence to evaluate the context, including the perceptions and explanations of both parties. The University will consider which party was the predominant aggressor.

The predominant aggressor is the individual, in a relationship violence incident, who uses violence to exert power and/or control over the other individual. The predominant aggressor may not necessarily be the party to initiate the violence, particularly in cases where a person has used violence in self-defense, to obtain withheld property, in an attempt to flee, or interrupt an act of violence.

The following factors may be considered in determining the predominant aggressor:
O Offensive and defensive injuries, if any, and any other probative physical evidence;
O Use of threats of harm against the other party, another family member, household member, and/or their property;
O Possession or use of a weapon or another means of injuring the other party;
O A prior history of violence in the relationship;
O The reasonableness of the defensive behavior;
O Witness statements; and/or
O Any other factor determined to be relevant given the specific reported circumstances.

1. Domestic Violence

Domestic violence is defined as an act of violence committed by any of the following individuals:

- A current or former spouse or intimate partner of the individual;
- A person with whom the individual shares a child in common;
- A person who is cohabitating with or has cohabitated with the individual as a spouse or intimate partner; or
- A resident or former resident of the individual’s household.

2. Dating Violence

Dating violence is defined as an act of violence committed by a person who is or has been in a social relationship of a romantic, sexual, or intimate nature with the individual that does not fall within the definition of “domestic violence.” For the purposes of this definition:

---

5 Domestic violence is a crime under Michigan law. Specific information about the criminal offense can be found in the Michigan penal code at MCLA § 750.81 and MCLA § 750.81a and in Appendix C.

6 For the purposes of this Policy, individuals are not covered within the scope of this definition solely by virtue of their status as a roommate or former roommate in University housing or as a co-tenant or former co-tenant in off-campus housing shared with other students. Such individuals may, however, face student conduct proceedings or criminal consequences for engaging in such conduct.

7 Dating violence is a form of domestic violence under Michigan law. Specific information about the criminal offense can be found in the Michigan penal code at MCLA § 750.81 and MCLA § 750.81a and in Appendix C.
• Whether the relationship is of a romantic, sexual, or intimate nature is determined by a variety of factors, including the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

• A relationship of a romantic or intimate nature is characterized by ongoing or past physical and/or emotional intimacy between the parties.

B. Stalking

“Stalking” is defined as engaging in a course of conduct that is directed at a specific person or persons that would cause a reasonable person to feel fear for themselves or for the safety of others, or to suffer substantial emotional distress.

• A “course of conduct” means two or more acts directed at a specific person or persons. In the context of stalking, this can include, but is not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

• “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical treatment or professional counseling.

• The term “reasonable person” is a legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, texts, cell phones, or other similar devices or forms of contact are used. This Policy prohibits all stalking, not just stalking that occurs within the context of a relationship.

C. Sexual Misconduct

“Sexual misconduct” is a broad term that encompasses sexual harassment, sexual violence, and sexual exploitation.

1. Sexual Harassment

Sexual harassment is a form of unlawful gender (sex) discrimination. “Sexual harassment” is defined as unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome behavior of a sexual nature. Sexual harassment violates University policy when:

8 Discrimination or harassment based on gender that does not involve unwanted sexual attention is prohibited gender discrimination under the University’s Anti-Discrimination Policy and is investigated by OIE using the same process described in this Policy. Gender-based harassment includes harassment based on sex or gender, gender identity, or
1. Submission to such behavior is made, explicitly or implicitly, a term or condition of an individual's employment or status in a course, program, or activity; or

2. Submission to or rejection of such behavior is used as a basis for a decision affecting an individual's employment or participation in a course, program, or activity; or

3. Such behavior is so severe, persistent, or pervasive that a reasonable person would find that it:
   a. Alters the terms or conditions of a person's employment or educational experience, or
   b. Unreasonably interferes with an individual's work or performance in a course, program, or activity, thus creating a hostile or abusive working or educational environment.

A person's subjective belief alone that behavior is offensive does not necessarily mean the conduct rises to the level of a policy violation. The behavior must also be objectively offensive to meet the definition of prohibited sexual harassment.

The term “reasonable person” is a legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.

In determining whether behavior is sexual harassment, the totality of the circumstances, including the nature of the behavior and the context in which it occurred, must be considered. Sexually harassing conduct often involves a pattern of offensive behavior. A single incident may also constitute sexual harassment, depending on the severity of the conduct and on factors such as the degree to which the conduct affected the student’s education, the employee’s work environment, or patient care; the type of conduct; and the relationship between the alleged harasser and the student, patient, or employee. The conduct does not have to be directed at a specific person or persons to constitute harassment.

   a. Examples of Sexual Harassment

Many kinds of behavior may fit within the preceding definition of sexual harassment. Speech and expressive conduct can also be sexual harassment. The following is a non-exhaustive list of examples of behavior that might fall within the preceding definition of sexual harassment:

---

**gender expression**, which may include acts of intimidation or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature.

---

9 These behaviors must meet the definition of sexual harassment contained in Section VI.C.1 of the Policy in order to constitute prohibited sexual harassment.
- Sexual violence, including sexual assault, rape, and sexual exploitation;
- Threats or insinuations that lead the recipient reasonably to believe that granting or denying sexual favors will affect her or his reputation, education, employment, advancement, or standing within the University;
- Sexual advances, sexual propositions, or sexual demands that are not welcome to the recipient;
- Persistent romantic pursuit such as repeated requests for dates or romantic encounters that are not welcome to the recipient;
- Unwelcome sexually explicit material sent to a recipient in any manner, including but not limited to electronic communication methods;
- Stalking, cyberstalking, recording or transmitting sexual or nude images and/or audio without an individual’s permission, and voyeurism;
- Unwelcome and persistent sexually explicit statements or stories that are not legitimately related to employment duties, course content, research, patient care, or other University programs or activities;
- Repeatedly using unwelcome sexually degrading words or sounds to a person or to describe a person;
- Unwanted and unnecessary touching, patting, hugging, or other physical contact;
- Recurring unwelcome comments or questions about an individual’s sexual prowess, sexual deficiencies, sexual behavior, or genitalia.

Behavior of a sexual nature that is not sexual harassment may nonetheless be unprofessional in the workplace, disruptive in the classroom, or violate other University policies and, like other behavior that is unprofessional, disruptive, or violates policy, could warrant discipline.

2. **Sexual Violence**

Sexual violence is defined as a physical sexual act perpetrated without consent. A number of different acts can fall within the definition of sexual violence, including rape, sexual assault, and sexual contact.

- “Sexual Assault” is defined as sexually penetrating, attempting to sexually penetrate, or having sexual contact with another individual by force or threat of force; without consent; or where the individual is incapacitated.
● “Rape” is a form of sexual assault that includes:
  o Non-consensual penetration, no matter how slight, of an individual’s genital opening, anus, or mouth with any body part or object; or
  o Non-consensual use of the sex organ of an individual to penetrate, no matter how slight, the genital opening, anus, or mouth, of another person.

● “Sexual contact” includes intentional contact of a sexual nature with the body parts of another, causing another to touch one’s intimate parts, or disrobing or exposure of another without permission. This can include contact of a sexual nature with intimate body parts such as the breasts, genitals, buttocks, groin, or mouth; however, sexual contact can occur with any part of the body that is touched in a sexual manner.

3. Sexual Exploitation

Sexual exploitation occurs when an individual takes or attempts to take non-consensual or abusive sexual advantage of another for one’s own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include:

● In situations where an individual has a legitimate expectation of privacy, surreptitiously observing or attempting to observe another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved, or in which the person observed or induced to perform such act has not attained 18 years of age;

● In situations where an individual has a legitimate expectation of privacy, the non-consensual recording, attempted recording, sharing, or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved, or in which the person recorded, viewed, or induced to perform such act has not attained 18 years of age;

● Exposing one’s genitals or inducing another to expose their own genitals in non-consensual circumstances, or in which the person induced to perform such act has not attained 18 years of age;

● Knowingly exposing another individual to a sexually transmitted infection or virus without their knowledge;

● Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity;
• Arranging for others to have non-consensual sexual contact or penetration with a person; and

• The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a sex act where such an act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

D. Consent

Consent means the voluntary, willful, and unambiguous agreement to engage in a specific sexual activity during a sexual encounter. Consent cannot be given by someone who is:

• Sleeping;

• Unconscious, unaware, or otherwise mentally or physically helpless because of drugs, alcohol, or other contributing factor (“incapacitated”);

• Unable to understand the nature of the sexual activity due to a mental disease or condition (“mentally incapable”); or

• Under duress, threat, deception, coercion, misuse of professional authority/status, or force.

Consent must be clear and communicated by mutually understandable words or actions. Silence, passivity, the absence of resistance, or the absence of a verbal “no” or “stop” do not imply consent, and relying solely on non-verbal communications may result in a violation of this policy. **It is important not to make assumptions.** If confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and verbally clarifies the other’s willingness to continue. Prior consent does not imply current consent or future consent; even in the context of a prior or current relationship, consent must be sought and freely given for each instance of sexual contact.

Consent to any one form of sexual activity does not automatically imply consent to other forms of sexual activity. Consent can be withdrawn at any time during a sexual encounter, at which point any further sexual activity becomes non-consensual. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

E. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered
incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation can only be found when the respondent knew or should have known that the claimant was incapacitated when viewed from the position of a sober, reasonable person. Incapacitation is distinguished from an alcohol-induced “blackout,” which is a different phenomenon, and not necessarily indicative of incapacitation. An alcohol-induced blackout is defined as amnesia for the events of any part of a drinking episode without loss of consciousness. It is characterized by memory impairment during intoxication in the relative absence of other skill deficits. It is not to be confused with “passing out.” An alcohol-induced blackout alone is not determinative of incapacitation. Given that individuals are conscious and can appear unimpaired during an alcohol-induced blackout, an incapacitation analysis also requires evaluation of other observed signs of impairment.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual’s:

- Decision making ability;
- Awareness of consequences;
- Ability to make informed judgments; or
- Capacity to appreciate the nature and circumstances of the act.

No single factor alone is determinative of incapacitation. There are some common signs that someone is incapacitated or may be approaching incapacitation, which may include:

- Slurred speech
- Bloodshot eyes
- Smell of alcohol on breath
- Clumsiness
- Inability to focus
- Confusion
- Shaky balance
- Stumbling or falling down
- Vomiting
- Poor judgment
- Difficulty concentrating
- Combative or emotional volatility
- Outrageous or unusual behavior
- Unconsciousness
In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person’s decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person’s level of intoxication. **If there is any doubt as to the level or extent of the other person’s intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.**

Being intoxicated or impaired by drugs or alcohol is never an excuse for misconduct and does not diminish one’s responsibility to obtain consent.

### VII. First Amendment Protections

This Policy shall not be interpreted to abridge First Amendment rights or to infringe academic freedom, as defined in the Faculty Handbook, the Faculty Rights and Responsibilities policy, the Outside Speakers Sponsored by Registered Student Organizations policy, and the document entitled Student Rights and Responsibilities at Michigan State University. The protections of the First Amendment must be carefully considered in all complaints involving speech or expressive conduct. The fact that speech or a particular expression is offensive is not, standing alone, a legally sufficient basis to establish a violation of this Policy. In order to violate this Policy, speech or expressive conduct must constitute sexual harassment, as defined in Section VI.C.1 above. Speech or expressive conduct that constitutes sexual harassment is neither legally protected expression nor the proper exercise of academic freedom.

### VIII. Resources and Assistance

The University and surrounding communities have a wide range of resources to provide medical, emotional, legal, advocacy, and other support to those involved in incidents of relationship violence, stalking, or sexual misconduct. Confidential and free services are offered to survivors through the MSU Center for Survivors (some services available for MSU community only) and MSU Safe Place (relationship violence and stalking services for campus and community). A comprehensive list of campus and community resources and contact information related to sexual assault and other sexual and relationship violence is available online at [www.civilrights.msu.edu](http://www.civilrights.msu.edu), [www.poe.msu.edu/resources](http://www.poe.msu.edu/resources), and [www.oie.msu.edu](http://www.oie.msu.edu).

The University also implements supportive measures it deems necessary during the process under this Policy. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modification of work or class schedules, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures the University puts in place after receiving notice of reported relationship violence, stalking, or sexual misconduct but before any final outcomes have been determined. Additional information about
supportive measures, including contact information to request supportive measures, is included below in Section X.C.

IX. Privacy and Confidentiality

Privacy and confidentiality have distinct meanings under this Policy.

A. Privacy

Privacy generally means that information related to a report of prohibited conduct will be shared with a limited circle of individuals who “need to know” in order to assist in the active review, investigation, resolution of the report, and related issues. All University employees who are involved in the University’s Title IX response receive specific training and guidance about safeguarding private information in accordance with applicable laws. The privacy of student education records will be protected in accordance with the University’s policy for compliance with the Family Educational Rights and Privacy Act (FERPA) and state law protections. The privacy of an individual’s medical and related records generally are protected in the United States by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. Access to personnel records is restricted in accordance with University policy and state law.

B. Confidentiality

Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without express permission of the individual, or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain confidential relationships include health care providers and mental health professionals in the capacity of their professional relationships with their patients or clients, sexual assault victim advocates, relationship violence victim advocates, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by Michigan state law. These individuals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) otherwise required or permitted by law or court order.

X. Reporting Procedures

A. Reporting Relationship Violence, Stalking, or Sexual Misconduct

All individuals are encouraged to promptly report conduct that may violate this Policy to the University. In addition, all individuals are encouraged to report conduct that may also violate criminal law to both the University and to local law enforcement. These processes are not mutually exclusive.
Any University student, employee, MSU HealthTeam patient, or other individual who seeks to make a complaint or report may:

- Make a report to OIE\textsuperscript{10};
- Contact the MSU Police Department for assistance in filing a criminal complaint and preserving physical evidence\textsuperscript{11}; and/or
- Contact local law enforcement to file a criminal complaint.

Individuals who do not wish to pursue a University or law enforcement investigation may contact confidential campus resources.

Claimants have the option to report the matter to law enforcement, to the University (OIE), to both, or to neither, as the individual may choose. Claimants may pursue some or all of these steps at the same time (\textit{e.g.}, one may simultaneously pursue a University complaint and a criminal complaint). When talking to one of these offices, claimants do not need to know whether they wish to request any particular course of action. Claimants do not need to know how to label what happened. Choosing to make a complaint, and deciding how to proceed after making the complaint, can be a process that unfolds over time. Before or during this decision-making process, claimants are encouraged to seek support and information from a confidential resource.

The University can most effectively investigate and respond to reports of relationship violence, stalking, or sexual misconduct if the complaint is made as promptly as possible after the reported violence, stalking, or misconduct occurs. However, the University does not limit the time frame for reporting. If the respondent is not a member of the MSU community at the time of the report, the University will still seek to provide reasonably available support for a claimant, but its ability to investigate and/or take action may be limited. The University will assist a claimant in identifying external resources upon request.

1. **Reporting to Confidential Campus Resources**

The University understands that a person may be undecided about reporting relationship violence, stalking, or sexual misconduct. In these cases, they may find a conversation with the MSU Center for Survivors, MSU Safe Place, MSU Employee Assistance Program, or the University Ombudsperson helpful. These offices can provide a confidential space where University community members may explore their options and the possible results of their choices. Whether they opt to report or not, members of the University community are

\textsuperscript{10} Policy references to OIE include the Title IX Coordinator, Director of OIE, Deputy Directors of OIE, or their designees, as well as all OIE Investigators.

\textsuperscript{11} The MSU Police processes are outlined in Appendix F.
encouraged to seek support from confidential counselors and/or advocates if they are dealing with these concerns.

2. Reporting to a Sexual Assault Forensic Examiner Program

The University also encourages individuals who have been sexually assaulted to undergo a health assessment offered by the Sexual Assault Forensic Examiner (SAFE) program at Sparrow Hospital or a comparable program as soon as possible. A sexual assault forensic examiner is a registered nurse specially trained to provide care to patients who have experienced sexual assault. The SAFE conducts medical forensic examinations, can provide medications and treatment, can preserve biological evidence for a later date, and can serve as an expert witness in a court of law. Individuals who decide to have a SAFE exam can choose whether or not to make a police report.

The SAFE program will not bill insurance (including students covered by their parents’ insurance) without written permission. If permission to bill an insurance company is not given, the exam is billed to the State of Michigan SAFE Program and is free of charge. The State of Michigan SAFE program is also confidential. The MSU Center for Survivors has advocates available to provide support and resources for patients at SAFE. If you go to Sparrow Hospital for a SAFE exam, the advocacy team will be paged and dispatched to the hospital to meet you.

3. Reporting to OIE and the MSU Police Department

OIE informs the MSU Police Department of all reports it receives regarding sexual assaults, sexual exploitation, relationship violence, and stalking. This does not obligate the claimant to talk to the police; and the choice about whether to participate in a law enforcement investigation remains with the claimant.

The MSU Police Department notifies OIE of all reported incidents of relationship violence, stalking, sexual harassment, and sexual misconduct. The MSU Police Department shares information about ongoing investigations with OIE to the extent that sharing such information will not interfere with law enforcement proceedings.

B. Contact Information: Filing Reports

Office of Institutional Equity:
408 W. Circle Dr., Suite 4, Olds Hall
East Lansing, MI 48824
(517) 353-3922
Email: oie@msu.edu
Web: https://oie.msu.edu/resources/reporting-options.html
MSU Police Department:
1120 Red Cedar Road
East Lansing, MI 48824
(517) 355-2221
Emergencies: 911

C. Contact Information: Confidential and Private Resources

MSU Counseling and Psychiatric Services (CAPS)
3rd Floor Olin Health Center Building
463 E. Circle Drive
East Lansing, MI 48824
(517) 355-8270
Emergencies: 911
Web: http://caps.msu.edu/

MSU Prevention, Outreach and Education (POE) Department
408 W. Circle Dr., Suite 101 Olds Hall
East Lansing, MI 48824
Phone: (517) 355-3865
Email: empower@msu.edu

MSU Center for Survivors
207 Student Services Building
556 East Circle Drive
East Lansing, MI 48824
(517) 355-3551 (office)
(517) 372-6666 (24 hour crisis line)
Web: https://centerforsurvivors.msu.edu/

MSU Safe Place
(517) 355-1100
Email: noabuse@msu.edu
Web: http://safeplace.msu.edu

University Ombudsperson
354 Farm Lane, Room 129, North Kedzie Hall
East Lansing, MI 48824
(517) 353-8830
Email: ombud@msu.edu
D. Other Important Campus Resources

Comprehensive guides to campus and community resources are available online at: https://civilrights.msu.edu/resources/index.html. The guides include information about resources for reporting, confidential and private resources, supportive measures, health care and mental health resources, legal resources, orders of protection, visa and immigration information, financial assistance, and other campus and community resources.

Students considering taking a leave of absence from the University because of the circumstances surrounding a case of sexual misconduct, stalking, or relationship violence should be aware that taking a leave may have financial aid implications. The Title IX Coordinator or their designee can assist students with contacting the Financial Aid Office to understand any financial aid-related issues that may arise.

Office of Financial Aid
(517) 353-5940
Student Services Bldg, Room 252
www.finaid.msu.edu

For visa and immigration assistance, individuals are encouraged to access the following resources:

- Office of International Students and Scholars – (517) 353-5940, International Center, Room 105, www.oiss.isp.msu.edu


E. Employee Reporting Obligations, Confidentiality, and Safety Concerns

The University strongly encourages individuals affected by relationship violence, stalking, and sexual misconduct to talk to someone about what happened and obtain support services. The University also needs to respond appropriately to reports of relationship violence or sexual misconduct in order to provide a safe and effective learning environment.

Most University employees are mandatory reporters (See Section X.I. below) who are obligated to bring reports of relationship violence, stalking, and sexual misconduct to the attention of OIE and the MSU Police Department, but some can maintain confidentiality of such reports if the victim so requests.12 Students and employees should be aware of the reporting options available to them so that they can make informed choices about disclosing details of an incident of relationship violence, stalking, or sexual misconduct.13

Individuals who choose to discuss an incident of relationship violence, stalking, or sexual misconduct only in a privileged/confidential or private setting should understand that the University will not be able to conduct an investigation into the particular incident, or pursue disciplinary action against the reported perpetrator, unless the incident is reported to OIE by the victim, law enforcement, someone who is obligated to make a report, or by a confidential party who has been given written permission by the victim to make a report. Counselors and advocates who are able to maintain confidentiality of reports will still assist their clients in receiving support services, regardless of whether a report is made. At the individual’s option, this will include coordinating with OIE to provide any necessary interim measures.

A claimant who requests confidentiality may later decide to file a complaint with OIE or the MSU Police Department. When they arise, safety risks associated with OIE or MSU Police Department contacting or interviewing the respondent will be taken into consideration especially in cases where the claimant is fearful and does not want the reported perpetrator contacted, or when the threats and abuse may escalate and put the claimant in increased danger due to the investigation process.

---

12 Students who are not also employees do not have reporting obligations under this Policy. Nevertheless, students who have witnessed relationship violence, stalking, or sexual misconduct are encouraged to promptly report such information to OIE and the MSU Police Department.

13 The disclosure options described in this Policy involve disclosures made by adults and conduct involving adults. Disclosures involving minors are governed by the reporting obligations outlined in the Reporting Protocols: Child Abuse, Sexual Assault, and Child Pornography. To view the protocols visit: https://hr.msu.edu/policies-procedures/university-wide/reporting_protocols.html. Disclosures involving imminent harm to self or others may also override confidentiality and require reporting to appropriate authorities.
F. Confidential Communications

Professional, licensed counselors who provide mental-health counseling to members of the community are legally not permitted, with few exceptions, as discussed in Section IX.B. to report any information to OIE or MSU Police Department without their client’s permission. Licensed counselors are available in the following offices:

MSU Center for Survivors
MSU Counseling and Psychiatric Services (CAPS)
MSU Couple and Family Therapy Clinic
MSU Employee Assistance Program
MSU Psychological Clinic
MSU Safe Place

Disclosure to one of the offices listed above does not constitute a report or notice to the University. Contact information for these offices can be found at Section X.C.

G. Private Communications

Individuals who work or volunteer in the following campus offices, including peer educators, can talk to a student or employee about an incident of relationship violence, stalking, or sexual misconduct without triggering the need to report personally identifiable information about the incident to OIE.

Claimant and Respondent Representatives
MSU Center for Survivors & 24-hour Sexual Assault Crisis Line
MSU Campus Equity Navigator
MSU Counseling and Psychiatric Services (CAPS)
MSU Employee Assistance Program
MSU Health Promotion
MSU Lesbian, Bisexual, Gay, and Transgender Resource Center
MSU Prevention, Outreach and Education (POE) Department
MSU Safe Place
MSU Sexual Assault Crisis Intervention (SACI) Team
MSU Student Health Services
University Ombudsperson

Disclosure to one of the offices listed above does not constitute a report or notice to the University. The privacy afforded to these offices is based in policy and not law. Therefore, individuals should recognize that, while the University considers conversations with these offices to be private, disclosure of some information may be required pursuant to a search warrant, subpoena, or statute, and may not be legally confidential.
H. Non-Personally Identifiable Information

The offices identified as confidential and private resources will periodically report non-personally identifiable information about relationship violence, stalking, and sexual misconduct reports that the offices have received to the Title IX Coordinator to keep the Title IX Coordinator informed of the general extent and nature of relationship violence, stalking, and sexual misconduct on and off campus. This will help the Title IX Coordinator track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Individuals in these offices will not share personally identifiable information with the Title IX Coordinator without the student or employee’s consent.

I. Reports to Mandatory Reporters

All University employees, other than those appointed in the offices listed above and certain medical professionals providing patient care, are Responsible Employees and are expected to promptly report relationship violence, stalking, and sexual misconduct that they observe or learn about and that involves a member of the University community (faculty, staff, or student) or which occurred at a University-sponsored event or on University property. The employee must report all relevant details they have about the alleged relationship violence, stalking, or sexual misconduct, including the name of the person who experienced the conduct, the name of the accused, names of any witnesses, and any other relevant facts, including the date, time, and specific location of the incident.

In cases where an employee is a witness to an unfolding or ongoing incident of relationship violence, sexual violence, sexual exploitation, or stalking, the employee must call the MSU Police Department immediately and is encouraged to intervene to the extent it is safe to do so. Employees must still report promptly to OIE. In cases where an employee is witness to an unfolding or ongoing incident of sexual harassment, the employee should intervene or notify a supervisor who can intervene to stop the behavior.

14 This includes reports that employees learn about in their professional capacity directly, through third parties, or through other disclosures.
NOTE: Undergraduate student employees should make reports to their supervisor, who will contact OIE and the MSU Police Department. Residential and Hospitality Services (RHS) live-in staff must follow the RHS mandatory reporting protocols.

Employees are only required to report relationship violence, stalking, or sexual misconduct of which they become aware in their capacity as a University employee, not in their personal capacity.

Once a report is made to OIE, the University will promptly take steps to initiate the investigatory process to determine what happened, connect with the person who experienced the reported conduct, and to address the matter promptly and equitably. Questions about whether a disclosure must be reported can be referred to the Office of the General Counsel, OIE, the MSU Police Department, or the University Ombudsperson.

### 1. Failure to Report

Employees who fail to adhere to their reporting obligations under this Policy are subject to disciplinary action, up to and including termination. Potential failures to report are investigated by OIE. OIE will document its findings in a memorandum, which will be sent to the employing unit. Discipline for violations will be handled in accordance with applicable employee disciplinary policies and procedures. The Office of Institutional Equity will maintain records regarding failure to report cases, including any associated discipline or other consequences.

---

15 Reports involving student employees are considered student reports.
2. Requests for Confidentiality or Anonymity

Individuals who experience relationship violence, stalking, or sexual misconduct may request confidentiality or anonymity, including that their name not be shared with the respondent, that the respondent not be notified of the report, or that no investigation occur. If the individual wants to tell the mandatory reporter what happened, but also wants to maintain confidentiality or anonymity, the employee should tell the individual that the University will consider the request but cannot guarantee confidentiality or anonymity. The employee should advise the individual that the details of the incident will be disclosed only to those officials with a legitimate institutional interest in knowing the information. In reporting the details of the incident to OIE, the employee will inform OIE of the individual’s request for confidentiality or anonymity, but must still provide that person’s name and/or identity, if known.

The Title IX Coordinator or their designee will weigh the individual’s request for confidentiality or anonymity against the University’s obligation to provide a safe, non-discriminatory environment for all students and employees, including the individual who experienced the reported conduct. The Title IX Coordinator or their designee will consider a range of factors in weighing the request, including:

- The increased risk that the reported perpetrator will commit additional acts of relationship violence, stalking, or sexual misconduct, such as:
  - Whether there have been other relationship violence, stalking, or sexual misconduct complaints about the same reported perpetrator;
  - Whether the reported perpetrator has a history of arrests or records indicating a history of violence;
  - Whether the reported perpetrator threatened further relationship violence, stalking, or sexual misconduct against the claimant or others;
  - Whether the relationship violence, stalking, or sexual misconduct was committed by multiple perpetrators; and/or
  - Whether there have been threats to kill or harm the individual who experienced the conduct.
- Whether the relationship violence, stalking, or sexual misconduct was perpetrated with a weapon;
- Whether the individual who experienced the conduct is a minor;
• Whether the University possesses other means to obtain relevant evidence of the relationship violence, stalking, or sexual misconduct (e.g., security cameras or personnel, physical evidence);

• Whether the report reveals a pattern of relationship violence, stalking, or sexual misconduct.

If the University honors the request for confidentiality, the Title IX Coordinator or their designee will explain to the individual that the University’s ability to meaningfully investigate the incident and pursue disciplinary action against the reported perpetrator may be limited. The Title IX Coordinator or their designee will also explain that the University prohibits retaliation against an individual for filing a complaint and that the University will take steps to prevent retaliation and take strong responsive action if any retaliation occurs. If the claimant continues to ask that their name not be revealed, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not prevent the University from responding effectively to the harassment and preventing harassment of others.

Regardless of whether the request for confidentiality is honored, the University will take steps to limit the effects of the reported relationship violence, stalking, or sexual misconduct and prevent its recurrence when possible. Such steps might include providing increased security or supervision at locations or activities where a pattern of relationship violence, stalking, or sexual misconduct exists; providing education and training materials for students, student groups, or employees; reviewing applicable relationship violence, stalking, and sexual misconduct or disciplinary policies; and conducting climate surveys regarding relationship violence, stalking, and sexual misconduct.

At times, in order to provide a safe, non-discriminatory environment for members of the campus community, the University may not be able to honor a request for confidentiality. In such circumstances, the Title IX Coordinator or their designee will inform the individual prior to starting an investigation and will share information only with people involved in the University’s investigation.¹⁶ The individual who experienced the conduct is not required to participate in the investigation. Should the individual choose not to participate in an investigation, the Title IX Coordinator or their designee will explain that the University’s ability to meaningfully investigate the incident and pursue disciplinary action against the reported perpetrator will be limited.

¹⁶ The individual who experienced the conduct may decide whether other individuals, such as parents, instructors, or colleagues, will be informed of the investigation unless special circumstances (such as the sexual assault of a minor) exist.
J. Reports from Witnesses & Bystander Intervention

Students or third parties who witness acts of relationship violence, stalking, or sexual misconduct perpetrated by a member of the University community (faculty, staff, or student) or occurring at a University-sponsored event or on University property are strongly encouraged to report the misconduct to OIE and the MSU Police Department.

Employees (including student employees) and University volunteers who witness acts of relationship violence, stalking, or sexual misconduct perpetrated by a member of the University community (faculty, staff, or student) or occurring at a University-sponsored event or on University property must follow the employee reporting chart contained in Section X.I.

The University encourages all witnesses of relationship violence, stalking, or sexual misconduct to engage in bystander intervention when safe to do so. Protocols for intervention and reporting for employees who witness incidents of relationship violence, stalking, or sexual misconduct are outlined in Section X.I.

K. Public Awareness Events

Public awareness or activism events and other public forums at which students or employees disclose experiences with relationship violence, stalking, or sexual misconduct are not considered notice to the University for the purposes of this Policy unless the individual also initiates a complaint under this Policy (e.g., Take Back the Night, town hall meetings, focus groups, open forums, protests).

L. Third Party and Anonymous Complaints

OIE processes all complaints of relationship violence, stalking, and sexual misconduct it receives, regardless of who files the complaint. Third party and anonymous complaints will not be rejected. However, without the participation or identity of the individual who experienced the conduct, the University may have insufficient information to conduct a formal investigation. The University’s ability to meaningfully investigate the incident and pursue disciplinary action against the reported perpetrator will be limited.

Individuals who wish to file an anonymous complaint may do so through the normal channels identified in this Policy or through the OIE online Public Incident Reporting Form. The Public Incident Reporting Form17 and information about reporting options are available online at www.oie.msu.edu.

---

17 Complaints submitted through the University’s Misconduct Hotline will be referred to OIE.
M. Amnesty for Drug or Alcohol Possession and Consumption Violations

The University encourages students to report all incidents of relationship violence, stalking, or sexual misconduct. Therefore, students who report relationship violence, stalking, or sexual misconduct will not be disciplined by the University for a violation of the University’s drug and alcohol possession or consumption policies that may have occurred in connection with the reported incident. Students are also protected by a Michigan law that provides amnesty for alcohol-related crimes if an underage individual, after consuming alcohol, presents (or accompanies an underage person presenting) at a health facility or agency for treatment or observation as a result of sexual assault.18

N. Relationship Violence, Stalking, or Sexual Misconduct by Third Parties

The University prohibits relationship violence, stalking, and sexual misconduct by third parties towards members of the University community when the third party has been brought into contact with the member of the University community through a University-sponsored program or activity.19 Although individuals who are not students or employees of the University are not subject to discipline under the University’s internal processes, the University will take prompt, corrective action to eliminate relationship violence, stalking, and sexual misconduct and prevent its recurrence in those circumstances. The University will also connect the individual who experienced the conduct with resources for support, and be available to assist with necessary accommodations.

If a University student believes they have experienced relationship violence, stalking, or sexual misconduct in a University-sponsored program or activity by an individual who is not a University employee or student, the student should report the conduct to OIE or the unit administrator (e.g., supervisor, department chair, or dean) responsible for that program or activity. The unit administrator will report the alleged relationship violence, stalking, or sexual misconduct to OIE and to the MSU Police Department.

If a University employee (including a student employee) believes that they have experienced relationship violence, stalking, or sexual misconduct within the scope of his or her employment activities by an individual who is not a University employee or student, the University employee should report the conduct to their supervisor or to OIE. The supervisor must report the relationship violence, stalking, or sexual misconduct to OIE and to the MSU Police Department.

18 MCL § 436.1703(10).

19 As outlined in Section II of the policy, the policy also prohibits sexual misconduct and relationship violence against third parties by members of the University community.
Individuals experiencing third party relationship violence, stalking, or sexual misconduct are encouraged to contact the MSU Center for Survivors or MSU Safe Place. Both programs offer a variety of services, including counseling, safety planning, and information about legal options and protections through the criminal and civil courts.

O. Outside Options for Resolution of Complaints

Students, employees, MSU HealthTeam patients, or other individuals who feel they were discriminated against may file sex discrimination complaints related to MSU health care activities or programs with the U.S. Department of Health and Human Services, Office for Civil Rights:

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
1-800-368-1019, 800-537-7697 (TDD)


Students who believe they have experienced sex-based discrimination in an educational program at MSU may file a complaint under Title IX with the regional enforcement office of the Office for Civil Rights, U.S. Department of Education, at the following address:

Office for Civil Rights
U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, OH 44115-1812
Telephone: (216) 522-4970
FAX: (216) 522-2573; TDD: (800) 877-8339
Email: OCR.Cleveland@ed.gov

Faculty and staff may file complaints under Title IX with the Office for Civil Rights, U.S. Department of Education, in certain circumstances; under Title VII with the Equal Employment Opportunity Commission; or under the Elliott-Larsen Civil Rights Act with the Michigan Department of Civil Rights.

Equal Employment Opportunity Commission
Detroit Field Office, Patrick V. McNamara Building
477 Michigan Avenue, Room 865
Detroit, MI 48226
Phone: (800) 669-4000
XI. Complaints or Grievances Related to MSU HealthTeam

Section 1557 of the Affordable Care Act (ACA) prohibits sex discrimination in applicable health programs and activities, including MSU HealthTeam. MSU strongly encourages any student, employee, MSU HealthTeam patient, or other individual who feels they were subjected to sex discrimination (including but not limited to sexual harassment, sexual abuse and/or sexual assault) to immediately contact OIE, MSU’s Title IX Coordinator, or the MSU Police Department (as described in Section X(A)(3) of this Policy) and/or the following Health Care Civil Rights Specialist:

    Tracy Leahy
    Deputy Director, Office of Institutional Equity
    Olds Hall, 408 West Circle Drive, Suite 4
    East Lansing, MI 48824
    Phone: (517) 353-3922
    Email: tleahy@msu.edu

Complaints or grievances related to MSU HealthTeam and other health programs will be processed and resolved according to the procedures for Resolution of Complaints and Reports described in Section XII of this Policy by, or under the supervision of, a dedicated Health Care Investigator employed or engaged by OIE.

MSU HealthTeam has a policy which requires its providers to secure informed consent and have a chaperone present for sensitive examinations, as well as appropriate procedures to maximize physical privacy. Patients may also request a chaperone or support person at any time for any examination with an MSU HealthTeam provider.
XII. University Resolution of Complaints and Reports

A. Overview

All reports of relationship violence, stalking, and sexual misconduct are reviewed by OIE under the direction of the Title IX Coordinator or their designee. Complaints filed against students or employees in graduate or professional programs will be investigated by OIE, not the individual colleges. Complaints filed against students or employees of the MSU College of Law will be referred to the Title IX Coordinator of the MSU College of Law. The University will respond to all complaints and reports of relationship violence, stalking, or sexual misconduct it receives, regardless of where the conduct which is the basis for the complaint allegedly occurred.  

After receiving a report of relationship violence, stalking, or sexual misconduct, the Title IX Coordinator or their designee will make an initial assessment of the reported information. The Title IX Coordinator or their designee will be guided by: (a) whether the claimant wishes to pursue formal resolution, requests anonymity, or requests that no disciplinary action be taken; (b) the availability of information or evidence suggesting that a Policy violation may have occurred; and (c) the University’s Title IX obligation to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent, and address the effects of prohibited conduct. The Title IX Coordinator or their designee may also determine that a formal investigation is warranted without a complaint if the University has sufficient notice that relationship violence, stalking, or sexual misconduct may have occurred.

Even if the Title IX Coordinator or their designee determines that a formal investigation is not warranted, the University will take prompt, responsive action to support a claimant and will take steps to eliminate, prevent, or address a hostile environment if it determines that one exists.

Upon completion of an initial assessment, the Title IX Coordinator or their designee will determine the course of action under the Policy, which may include:

- **Formal resolution**, which includes (a) a formal OIE investigation; (b) if the Title IX Coordinator or their designee determines that credibility is not in dispute and material to the outcome or neither the claimant nor respondent requests a hearing, a determination by the OIE investigator if there has been a Policy violation; (c) if the Title IX Coordinator or their designee determines that credibility is in dispute and material to the outcome and either the claimant or respondent requests a hearing, the Resolution Officer conducts a hearing and thereafter makes a determination if there has been a Policy violation; (d) the imposition of sanctions or other remedies by the appropriate person or entity if there has

---

20 The University generally does not investigate allegations of harassment or discrimination that fall outside the jurisdictional limits of the Anti-Discrimination Policy and General Student Regulations. Nevertheless, the University will respond to all complaints of relationship violence and sexual misconduct in accordance with this Policy, regardless of where the conduct that is the basis for the complaint allegedly occurred, in order to evaluate whether there is a hostile environment on campus that would be contrary to the University’s legal obligations.
been a finding of a Policy violation; and (e) the opportunity to challenge through an appeal (1) the finding of whether the Policy was violated, and/or (2) the sanction.

- **Informal resolution**, which does not include a formal investigation or disciplinary action for a violation of this Policy, but may include the appropriate person or entity imposing suitable and reasonable remedies, including other corrective action, education, and training, as agreed to by the parties. Informal resolution may be appropriate as an additional measure during any sanctioning, or after a sanction has been completed and a respondent is returning to the University.

- **Additional administrative remedies**, which may include training and other educational programming to members of the University community.

OIE maintains detailed records of each informal and formal complaint, including individuals involved, investigative steps taken, documentation received, individuals interviewed, decisions reached, sanctions imposed, other responsive actions and reason(s) for decisions reached. Complaints and information gathered during the investigation process will be kept private to the extent permitted by law.

**B. Sexual History of the Parties**

The claimant or respondent’s character or reputation with respect to other sexual activity is never relevant and will not be considered as evidence. However, prior sexual history may be considered under the following limited circumstances:

- Where there was a prior or ongoing relationship between the claimant and respondent, and the respondent asserts that consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.

- To analyze allegations of a pattern or practice of past conduct which is similar in nature by the respondent.

In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed relevant.

Where OIE intends to consider evidence of prior sexual history as part of the investigation, such evidence will be included in the preliminary investigative report, and the parties will have an opportunity to challenge its relevance and whether it should be considered in the final analysis.
Relevant evidence of prior sexual history must be based on direct information, not rumor, hearsay, speculation, or conjecture.

C. Law Enforcement Investigations

Claimants may pursue a complaint with the University and police simultaneously. Law enforcement and OIE independently investigate complaints of relationship violence, stalking, and sexual misconduct. Law enforcement investigates to determine whether there has been a violation of criminal law. OIE investigates to determine whether there has been a violation of University policy. The investigations can proceed concurrently, and the outcome of one investigation does not determine the outcome of the other investigation.

Occasionally, OIE may need to briefly suspend the fact-finding aspect of its investigation at the request of law enforcement while police are in the process of gathering evidence. OIE will maintain regular contact with law enforcement to determine when it may begin its investigation. Even if an OIE investigation is briefly suspended, the University will nevertheless communicate with the claimant regarding their rights, procedural options, and the implementation of appropriate interim measures to assist and protect the safety of the claimant and the campus community and to prevent retaliation. OIE will promptly resume its investigation as soon as law enforcement provides notice to OIE that it has completed its evidence gathering process, or sooner, if the University determines that the law enforcement evidence gathering process will be lengthy or delayed. Federal law does not permit the University to delay its investigation until the ultimate outcome of the criminal investigation.

The MSU Police Department reports all incidents to OIE and provides all victims of relationship violence, stalking, and sexual misconduct with information about the OIE investigation process, as well as information about available campus and community resources. OIE and the MSU Police Department attend joint training and will communicate regularly on the investigation of sex discrimination grievances and complaints. (See Section X(A)(3)).

D. Preservation of Evidence

Individuals involved in a report of relationship violence, stalking, or sexual misconduct should preserve evidence to the extent possible, as it may assist the University or law enforcement in making factual determinations about the reported violence or misconduct, or might be relevant to a court’s determination regarding the issuance of a Personal Protection Order. Specific suggestions for preservation of evidence in cases of sexual assault can be found online at https://centerforsurvivors.msu.edu/ or (517) 355-3551. In cases involving relationship violence or stalking, individuals may contact MSU Safe Place at (517) 355-1100 or noabuse@msu.edu to speak with an advocate. The University encourages individuals to go to the police or another resource in order to assist in the preservation of evidence.
E. Supportive and Interim Measures

The University may take interim measures it deems appropriate and necessary during an investigation and adjudication. Interim measures are those services, accommodations, and other forms of assistance implemented through the University after it receives notice of an incident of reported relationship violence, stalking, or sexual misconduct but before any final outcomes (investigatory, disciplinary, or remedial) have been determined. The University will notify both the claimant and respondent, in writing, that interim measures are available during the University’s investigation, adjudicatory, sanction, and appeal process. The University will facilitate reasonably available interim measures, which may be both remedial (designed to address safety and well-being and continued access to educational opportunities) or protective (involving interim action against a student or employee).

Interim measures are available regardless of the manner of resolution under this Policy and regardless of whether or not the incident is reported to law enforcement. OIE will coordinate interim measures associated with an OIE investigation. The University will also facilitate appropriate interim measures when the University has temporarily deferred its investigation at the request of law enforcement. In circumstances where a claimant has chosen not to proceed with an OIE investigation and reports only to confidential sources, the MSU Center for Survivors and MSU Safe Place will work through the Accommodations and Supportive Measures Specialist to coordinate interim measures. Interim measures will not disproportionately negatively impact either party.

Interim measures will be consistent with University policies and may include the following where appropriate:

- **Academic assistance such as:**
  - Discrete professor notification regarding absences
  - Schedule changes
  - Course load reductions
  - Withdrawals without penalty
  - Course Retakes
  - Coordinating extensions
  - Referrals for academic support services

- **Alternative housing placement**

- **Protective measures**
  - University no-contact directive
  - Removal of directory information
  - Removal of parties from campus

- **Alternative work schedules/locations**

- **Voluntary leave of absence**
transportation information

● Referrals to on- and off-campus services
  o Counseling
  o Medical services
  o Financial Assistance
  o Immigration Assistance

As a protective measure, the University may issue a “no-contact directive” between the claimant and respondent or limit an individual’s or organization’s access to certain University facilities or activities pending resolution of the matter. The University might also impose an interim disciplinary suspension, suspension from employment, or other remedies which can be tailored to the involved parties to achieve the goals of this policy.

If a claimant has obtained an order of protection, civil no-contact order, restraining order, or similar order from a criminal, civil, or tribal court against the respondent, the claimant may provide such information to the Title IX Coordinator. If provided, the Title IX Coordinator, in conjunction with MSU Police Department and other University officials, as needed, will take all reasonable and legal action to implement the order.

When reviewing requests for interim measures, OIE will consider a number of factors, which may include:

● The specific need expressed by the party;

● The severity or pervasiveness of the report;

● The status of the claimant and respondent, including if the respondent is in a position of authority or influence;

● Any continuing effects on a party;

● If a party is under the age of 18;

● Reported use of force, violence, or use/display of weapons;

● Likelihood the parties will encounter each other in different settings (e.g., class, residence halls, cafeteria, extracurricular activities, employment, transportation, etc.);

● The existence of other judicial measures (e.g., civil protection orders); and/or

● Any other appropriate factors based on the circumstances presented.
The provision of interim measures under this Policy does not limit or diminish the authority of other units on campus from taking responsive action where policies and procedures under their authority have been violated.

The University will maintain as confidential any interim measures provided under this policy to the extent it is legally able to do so and to the extent confidentiality will not impair the ability to provide the interim measure. The University will promptly address any violation of the interim measures. These interim measures may be kept in place until the end of any review or appeal process or may be extended permanently as appropriate.

The Title IX Coordinator will take steps to ensure that the appropriate interim measures are provided. The Title IX Coordinator will maintain oversight of support services and interim interventions. The Title IX Coordinator has the discretion to ensure the appropriateness of any interim measure based on all available information, and is available to meet with a claimant or respondent to address any concerns about the provision of interim measures.

Violations of interim measures, such as university no-contact directives and access restrictions, should be reported to OIE. Violations will be addressed through the Dean of Students Office for students and MSU Human Resources or Academic Human Resources for employees. Students may face disciplinary action up to and including expulsion and employees may face disciplinary action up to and including dismissal.

**F. Advisors or Support Persons**

Throughout the process, claimants and respondents may have an advisor or support person of their choice present at any meeting related to the investigation, adjudicatory, or sanction processes. An advisor of choice may include an attorney. Any person who serves as an advisor or support person should plan to make themselves available for meetings or conferences throughout the process.

During the investigation process, the advisor or support person is a silent and non-participating presence who is there solely to observe and provide support. An advisor or support person who is verbally abusive, disruptive to the investigative process, or persists in trying to substantively interfere with the investigative process after warnings to cease and desist may be asked to leave and may be precluded from attendance at future meetings or conferences.

At the hearing, if a hearing is conducted, the advisor or support person may serve as a party’s representative to conduct questioning of the other party and witnesses. The University has the right at all times to determine what constitutes appropriate behavior on the part of an advisor or support person, as well as a party’s representative at the hearing.

The advisor or support person is encouraged to join the claimant’s or respondent’s initial meeting with a University administrator for an orientation to the University’s policies and procedures,
privacy protections, and expected participation/decorum. The advisor or support person may not be a witness or otherwise have any conflicting role in the process.

Advisors or support persons are available through the Office for Civil Rights and Title IX Education and Compliance.

G. Formal Resolution of Complaints and Reports

1. Explanation of Rights and Options

In response to reports of relationship violence, stalking, or sexual misconduct, OIE provides a written explanation to the claimant and respondent summarizing their respective rights and options. This written explanation will include information about reporting procedures, investigation and adjudication procedures, law enforcement, legal options, confidentiality protections, supportive resources, interim measures, and campus disciplinary procedures.

2. Investigating Details

Trained professionals conduct investigations under the oversight of the Title IX Coordinator or their designee. The investigator is neutral. Investigations begin with a determination of whether the University has jurisdiction over the matter. If jurisdiction is established, and the Title IX Coordinator or their designee determines that formal resolution is the appropriate course of action, both the claimant and respondent will be notified of the initiation of the investigation; the potential policy violation(s) at issue; the right to participate in the investigation; the timeframe for responding; and that the investigation may proceed without the participation of either party. Investigations typically include interviews of the claimant, respondent, and any relevant witnesses. See Appendix G for a flow chart of the OIE investigation process and investigation time frame.

3. Gathering & Reviewing Evidence

Both the claimant and respondent will have an opportunity to identify potential witnesses and provide any evidence or other information relevant to the investigation. OIE will review and determine the relevance of any proffered information and evidence. In general, OIE will not consider statements of personal opinion, rather than direct observations or reasonable inferences

21 This form is the Claimant or Respondent Information Form. The parties also receive a copy of the Policy which provides extensive explanation of the University’s response to relationship violence, sexual misconduct, and stalking, including investigation and adjudication.
from the facts or statements as to any party’s general reputation for any character trait, including honesty or chastity.

While the parties to the investigation may provide information and evidence, it is OIE’s responsibility to gather relevant evidence to the extent reasonably available, such as information within the University context (e.g., University security access records, employee or student information, etc.) or by contacting outside agencies (e.g., medical treatment providers, law enforcement, etc.). Parties may propose medical or scientific experts. OIE shall not utilize medical or scientific experts that have an actual or apparent conflict of interest or bias for or against claimants or respondents generally or an individual claimant or respondent. Any expert witness determined to have an actual or apparent conflict of interest shall be prohibited from serving as an expert witness or otherwise participating in the investigation or resolution of the matter for which the conflict exists absent a waiver by all parties. If OIE relies on an expert, the expert will be identified in any final written report and the report will reflect that the Title IX Coordinator determined that the expert did not have a conflict of interest. There is no requirement that a claimant or respondent share privileged or confidential medical and counseling records with OIE. However, where a party chooses to share medical or counseling records as part of the investigation, the records will be included in the investigation file and may be available to the other party pursuant to a subpoena, court order, or other legal mandate.

4. Party Participation - Investigative Process

During the investigation process, both parties will be provided timely notice of any meeting at which their presence is requested or required. Such meetings provide both parties with an opportunity to be heard and present their account of the events in-person. The claimant is not required to appear in the same room or otherwise confront the respondent. The parties are not permitted to personally cross-examine each other during the investigation process, including any hearings or appeals. However, either party may submit questions in writing to OIE to be asked of the other party, and, if a hearing is held, a party’s representative will be permitted to ask questions of the other party. Questions may be submitted at any time during the investigation process up to the deadline for the review of the preliminary investigation report. The opportunity to submit written questions may not be used to harass or intimidate the other party.

---

22 Polygraph reports, which include the opinion of polygraph experts, shall not be considered by OIE or the Resolution Office as relevant evidence. Polygraph test results are considered to be character evidence in support of honesty, which is generally not considered. Additionally, polygraph tests do not meet standards of scientific reliability.

23 Medical experts involved in the assessment, care, or treatment of either party will not be considered to have an actual or apparent conflict of interest. The University Title IX Coordinator will determine whether a conflict exists.

24 Notices provided to students and employees under this Policy will be sent to the individual’s official msu.edu email account.
questions will be reviewed by the Title IX Coordinator or their designee to determine if they are relevant to the investigation.

5. Conclusion of Investigative Process

Both parties will be provided with regular updates regarding the status of the investigation process. At the conclusion of the fact-finding portion of the investigation, both parties will be provided with an opportunity to review the preliminary investigation report and provide feedback to the information gathered, as well as ask any questions of the investigator. After providing both parties with the opportunity to review the preliminary investigation report and submit feedback, the investigator will incorporate relevant feedback into the preliminary investigation report and the Title IX Coordinator or their designee will determine whether credibility is in dispute and material to the outcome.

6. Determination of Credibility Issue - Hearing Request

If the Title IX Coordinator or their designee determines that credibility is in dispute and material to the outcome, both parties will have the opportunity to request a hearing to allow for cross-examination of the other party and requested witnesses. Should either party request a hearing, the matter will be referred to a Resolution Officer to schedule and conduct a hearing.

7. No Credibility Issue or Hearing Not Requested

If the Title IX Coordinator or their designee determines that credibility is not in dispute or material to the outcome, or if credibility is in dispute and material to the outcome but neither party requests a hearing, the investigator will issue a final investigation report and make a determination whether the Policy was violated.

8. Credibility Issue - Hearing Requested

If credibility is determined to be in dispute and material to the outcome, and either party requests a hearing, the Title IX Coordinator or their designee will provide the parties and the Resolution Officer with: 1) the preliminary investigation report, 2) notice that the matter is referred to a Resolution Officer for an adjudicatory hearing, and 3) reasonable electronic access to the evidence obtained as part of the investigation. The Resolution Officer will also have access to the case file so that the Resolution Officer is well-versed in the facts of the case, and may consult with the investigator as necessary.

a. Pre-Hearing Conference

The Resolution Officer will convene a pre-hearing conference with each party’s representative to plan for the hearing. Representatives are available through the Office for Civil Rights and
**Title IX Education and Compliance.** At the pre-hearing conference, the Resolution Officer and party representatives will discuss, at a minimum, the following topics:

- Identification of a party’s representative, whom, as set forth above, may be an attorney and may have also previously served as the party’s advisor or support person
- The procedures to be followed at the hearing
- Identification and exchange of witnesses who will appear at the hearing
- Identification and exchange of any evidence and/or exhibits that will be presented at the hearing
- Identification and exchange of proposed questions to be asked of the other party

The parties’ respective representatives are to attend the pre-hearing conference with the Resolution Officer. Parties may attend at their own discretion. Prior to the conference, the parties will provide a list of witnesses they may call and evidence they may use during the hearing. At the pre-hearing conference, either party, through their representative, may ask that the Resolution Officer be recused for cause, conflict of interest, or bias. The Resolution Officer, after hearing the representatives’ arguments, will decide whether he or she should be recused.

**b. The Hearing**

The Resolution Officer is responsible for maintaining an orderly, fair, and respectful hearing. The Resolution Officer has broad authority and discretion to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. The Resolution Officer has discretion to determine what evidence and questions should be fairly included or excluded during the hearing.

The Resolution Officer will keep an official recording of each hearing. No camera, TV, phone, or other recording devices other than that used or approved by the Resolution Officer will be permitted. Hearings are closed to the public.

Claimants and respondents will not be located in the same room for a hearing and are prohibited from personally cross-examining each other. Hearings are conducted through videoconference or similar technology. The claimant and their representative shall be in one location, and the respondent and their representative shall be in a different location. The parties may have additional support persons with them, but such a support person cannot take an active or speaking role during the hearing. Witnesses are not to be present at any party’s hearing location until called by the Resolution Officer.
The hearing begins when the Resolution Officer calls the hearing to order. The Resolution Officer shall call for the claimant. Through videoconference or similar technology, the respondent’s representative then has the opportunity to question the claimant. The Resolution Officer may ask questions of the claimant.

The Resolution Officer shall then call for the respondent. Through videoconference or similar technology, the claimant’s representative then has the opportunity to question the respondent. The Resolution Officer may ask questions of the respondent.

At the request of either party, a witness may be called to provide information on a specific issue or issues. A party’s representative may question a witness. The Resolution Officer may ask questions of a witness.

c. Deliberation

At the conclusion of the hearing, the Resolution Officer will deliberate, make a determination whether the Policy was violated, and issue a decision.

9. Decisions/Findings

The University utilizes a preponderance of the evidence standard to determine if the Policy was violated. A respondent is presumed not to have violated the Policy unless a preponderance of the evidence establishes a Policy violation. A party’s decision not to provide a statement or be interviewed will not be given an adverse inference.

Both the claimant and the respondent will be notified concurrently, in writing, of the final outcome, the rationale for the outcome, and the process to appeal the findings of the investigator or the Resolution Officer. Identical final reports shall be issued to claimants, respondents, and administration. Divergent reports are prohibited.

If an investigation results in a determination that relationship violence, stalking, or sexual misconduct has occurred, the University will take prompt and effective steps to end the sexual misconduct, relationship violence, or stalking; eliminate the hostile environment and prevent its recurrence; and remedy the discriminatory effects on the victim and others. For students, this means that the matter will be referred to the Dean of Students Office to determine the appropriate sanction. For employees, this means that the matter will be referred to MSU Human Resources/Academic Human Resources to determine the appropriate personnel action. The Title IX Coordinator, in cooperation with the relevant University officials, will also confirm that appropriate non-disciplinary remedies have been provided to the claimant. The Title IX Coordinator will also provide broad-based or targeted remedies for the community as appropriate, such as additional training, climate assessments, revisions to policy or practices or any other action tailored to the facts and circumstances which may eliminate, prevent, or address
the effects of a hostile environment. The Title IX Coordinator will monitor the matter to increase the likelihood that that the relationship violence, stalking, or sexual misconduct does not recur.

If an investigation results in a determination that sexual harassment occurred but that there is insufficient evidence to find that a particular student or employee violated University policy, the University will still take other necessary steps to stop the harassment, prevent its recurrence, eliminate any hostile environment, and remedy the effect of the harassment on the claimant and others as appropriate.

10. Appeals and Sanctions for Students

Both the claimant and respondent may appeal any decision on one or more of the following grounds: (1) The OIE finding was arbitrary and capricious; (2) the OIE finding resulted from procedural error; or (3) the sanction is clearly inappropriate or is not commensurate with the seriousness of the offense. A finding is arbitrary and capricious when the application of the policy has no reasonable basis in fact. A finding results from procedural error where the procedural error (including bias or impartiality) materially affected the outcome.

Where OIE or the Resolution Officer found no violation of this Policy, a written appeal must be filed within 10 calendar days of written notice of the final decision.

Where OIE or the Resolution Officer found a violation of this Policy, the parties will have 7 calendar days to submit a claimant impact statement or respondent mitigation statement. The Dean of Students or their designee will issue a written decision regarding the appropriate sanction within 7 calendar days after the time to submit an impact or mitigation statement expires. Appendix H outlines the range of possible sanctions. The claimant and respondent will then have 10 calendar days from the date of the sanction decision to file an appeal of either the OIE/Resolution Officer decision or the sanction, or both.

If an appeal of the decision and/or sanction is filed, the other part(ies) will have 10 calendar days to respond to the appeal in writing.

The Equity Review Officer will review the appeal and issue a written decision within 14 calendar days of receiving the appeal documents.

These timeframes may be extended for good cause, provided that the parties are provided with notice of the extension. See Appendix I for additional information on appeal procedures.
11. Appeals and Discipline for Employees

Appeals involving employee respondents must be filed within 10 calendar days of written notice of the final decision issued by OIE or the Resolution Officer. Both the claimant and respondent may appeal any decision. An appeal must allege that the OIE finding was arbitrary and capricious or resulted from procedural error. A finding is arbitrary and capricious when the application of the policy has no reasonable basis in fact. A finding results from procedural error where the procedural error (including bias or impartiality) materially affected the outcome.

If an appeal is filed, the other part(ies) will have 10 calendar days to respond to the appeal in writing.

The Equity Review Officer will review the appeal and issue a written decision within 14 days of receiving the appeal documents.

After any appeal is decided, the matter will be referred to MSU Human Resources/Academic Human Resources to assist unit administrators with imposing appropriate disciplinary action. Appendix H outlines considerations regarding appropriate discipline. These timeframes may be extended for good cause, provided that the parties are provided with notice of the extension. See Appendix I for additional information on appeal procedures.

12. Complaints against Students and Employees

Complaints alleging relationship violence, stalking, or sexual misconduct are investigated by OIE under the direction of the Title IX Coordinator or their designee. All investigation or adjudicatory findings resulting in a violation are sent to the parties and either the Dean of Students Office for reports involving student respondents or MSU Human Resources/Academic Human Resources for reports involving employee respondents. Upon request by a member of the Board of Trustees, a copy of the final investigative report, Resolution Officer’s decision, and/or the discipline decision involving a complaint against an employee will be provided to a member of the MSU Board of Trustees. The requested report or decisions will protect the claimant’s anonymity, and the report will not contain specific identifying information of the claimant.

Investigation or adjudicatory findings involving a respondent who is both a student and employee will be sent to the Dean of Students Office and the appropriate human resources office. These offices review the final report and any decision and facilitate the determination and implementation of sanctions.
13. Additional Standards of Review for Complaints Against Employees

The University President and a member of the Board of Trustees shall be notified in writing by the Title IX Coordinator or their designee if more than one allegation has been made against an employee that resulted in a finding of no misconduct. The Title IX Coordinator or their designee will take all appropriate steps to ensure the matter is being investigated thoroughly, including hiring an outside investigator for future cases involving that employee. Within 30 days of the close of each semester, the University President and a member of the Board of Trustees will receive a report identifying all open and recently resolved complaints and allegations against an employee of the University and copies of all final investigative reports and written determinations issued during the semester. Reports will be provided in a manner that protects the claimant’s anonymity, and the report will not contain specific identifying information of the claimant.

14. Sanctions and Remedies

In cases where sexual misconduct, stalking, or relationship violence occurred, the University will determine the appropriate, enforceable sanction as outlined earlier in this Policy. The sanction will be reasonably calculated to stop the harassment and prevent its recurrence. The University will provide simultaneous written notification to claimants and respondents when discipline or sanctions are imposed resulting from a finding that a student or employee violated this Policy. The University will not negotiate with a student or employee for a lesser sanction if that sanction will not end the sexual misconduct, stalking, or relationship violence, eliminate the hostile environment, prevent its recurrence, and remedy the discriminatory effects on the individual who experienced the conduct and others. In addition to disciplinary sanctions for the respondent, the University may also provide remedies to claimants and others who have experienced sexual misconduct, stalking, or relationship violence, including counseling, academic accommodations, academic support, or employment accommodations. Other potential remedies may include targeted or broad-based educational programming or training.

15. Investigations Without a Complaint

When necessary to meet its commitment to provide an environment free of unlawful relationship violence, stalking, or sexual misconduct, the University may investigate reported incidents of relationship violence, stalking, or sexual misconduct of which it becomes aware, even if no complaint has been filed, the individual(s) involved is unwilling to pursue a complaint or participate in an investigation, or the individual(s) involved has requested to participate anonymously. If a University employee becomes aware of specific and credible allegations of

---

25 The member of the Board of Trustees will be the Board Chair or a Trustee who is a member of a Board committee with responsibility for reviewing OIE reports.
relationship violence, stalking, or sexual misconduct, whether through a claimant or otherwise, the allegations should be reported promptly to OIE.

16. New Evidence Discovered After Time to Appeal

If new, previously unavailable evidence is discovered after an investigation has concluded, a final determination has been made, and the time to appeal has expired, and the evidence is substantive and material to the case, OIE must re-open the formal resolution process. Any individual may submit newly discovered evidence to OIE, along with a statement explaining why the evidence was previously unavailable despite reasonable diligence to identify relevant evidence earlier. OIE will decide whether the evidence was previously unavailable and is substantive and material to the case. If so, OIE will re-open the case.

H. Informal Resolution and/or Administrative Action

The term “Administrative Action” encompasses action taken by the University in situations involving:

- Occasions where there is no formal investigation conducted due to the request of the claimant, a claimant’s request or anonymity, because the claimant does not consent to participate in an investigation, because there is insufficient information to proceed with an investigation, or because OIE lacks jurisdiction;
- When a respondent is not affiliated with the University; or
- A finding of no violation of the Policy but the conduct at issue suggests the need for remedial, educational, or preventative action.

Administrative Action may include, but is not limited to:

- Implementing protective measures and accommodations as described in the Interim Measures section of this Policy;
- Personnel actions;
- Targeted or broad-based educational programming or training; and/or
- Direct intervention with the respondent.

Depending on the action taken, it may be possible for a claimant to maintain anonymity.

The decision to take Administrative Action will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time. All Administrative Actions are taken within the context of applicable University policies.

The Title IX Coordinator or their designee will maintain records of administrative action taken.
XIII. Privacy of Investigations

The investigation of relationship violence, stalking, and sexual misconduct complaints will be conducted in a private manner, except insofar as information needs to be disclosed so that the University may effectively investigate the matter or take corrective action. The parties are not restricted from discussing and sharing information relating to their investigations with others, so long as the information is not protected by FERPA. However, parties are cautioned that disparaging remarks may be viewed as retaliatory or defamatory. Retaliation, including retaliatory harassment, is prohibited under this Policy. (See Section XV).

XIV. Conflicts of Interest

The University does not allow conflicts of interest, real or reasonably perceived, by those investigating or adjudicating allegations under this Policy or its related procedures. A conflict of interest exists when an individual’s knowledge of the matter or personal or professional relationships with the claimant, respondent, or witnesses would preclude the individual from being able to investigate or adjudicate the case fairly and impartially. Parties may challenge an investigator because of a conflict of interest by filing a challenge with the Title IX Coordinator or their designee. Parties may challenge the Resolution Officer, Equity Review Officer or Dean of Students by filing a challenge with the individual being challenged.

XV. Retaliation

The University prohibits retaliation (including retaliatory harassment) against individuals who report relationship violence, stalking, or sexual misconduct, or who participate in the University’s investigation and handling of such reports, even if the University finds that no violation of Policy occurred. Retaliation is an act or attempted act taken because of a person’s participation in a protected activity that would discourage a reasonable person from engaging in protected activity. The University will take strong responsive action if retaliation occurs. Complaints of retaliation will be investigated by OIE. During a retaliation investigation, the University may implement new or additional interim measures to facilitate continued access to educational programs and activities. Where OIE determines that retaliation occurred in violation of the Policy, the person will be subject to disciplinary action up to and including dismissal for students and termination for employees.

Individuals participating in the investigation who believe they are being subjected to retaliation, including retaliatory harassment, should promptly contact OIE.

XVI. Participation

Members of the University community are expected to participate in the University’s investigations and adjudications of reported relationship violence, stalking, or sexual
misconduct. If individuals choose not to participate, the investigation and adjudication will proceed based on the information available.

**XVII. Unit Administrator Responsibilities**

OIE is responsible for monitoring the University’s compliance with federal and state nondiscrimination laws. However, a discrimination-free environment is the responsibility of every member of the University community. Unit administrators set the tone regarding acceptable conduct and climate within their units. Unit administrators are responsible for ensuring that employees within their units have completed the required online RVSM training and that external entities, such as contractors and third parties the unit works with, are aware of the University’s RVSM Policy.

Unit administrators are responsible for providing assistance to OIE regarding complaints under this Policy in which the reported harasser is an employee. Unit administrators who need assistance interpreting this Policy, obtaining education and training with respect to the Policy, or who have questions about relationship violence, stalking, or sexual misconduct prevention, may contact the Assistant Vice President for Human Resources or the Associate Provost/Associate Vice President for Academic Human Resources, whichever is appropriate; the Director of the Office of Institutional Equity; and/or the Office of the General Counsel.

**XVIII. False Complaints**

All parties and witnesses are expected to provide truthful information in any proceeding under this Policy. Any member of the University community who knowingly files a false complaint of relationship violence, stalking, or sexual misconduct, or who knowingly provides false information to or intentionally misleads University officials who are investigating or reviewing a complaint, is subject to disciplinary action, up to and including discharge for employees and dismissal for students. Disciplinary action under this section of the Policy is not considered prohibited retaliation. A false complaint is defined as a report to the University of an act or acts of relationship violence, stalking, or sexual misconduct, which the individual reporting knew was not true. When analyzing a reported false complaint, OIE will consider the following:

- The state of mind of the individual accused of making the false report;
- If the individual intentionally made the false report; and
- If there were other circumstances involved.

Other circumstances OIE will consider include an individual’s decision to recant, fear of retaliation, mental health concerns, and other relevant factors. OIE will differentiate these other circumstances from false reports.
XIX. Additional Information and Resources

A. Education

The University is committed to enforcing this Policy and thereby helping to stop relationship violence, stalking, and sexual misconduct among its students, faculty, and staff. To that end, this Policy will be published on the University’s website. Information regarding this Policy will be included in orientation materials for new students, faculty, and staff; made available at OIE, as well as on its website; and shared in other appropriate campus locations. In addition, the University will conduct educational sessions to: (1) inform students, faculty, and staff about identifying relationship violence, stalking, and sexual misconduct, the problems they cause, and its impact on the campus community, (2) advise members of the University community about their rights and responsibilities under this Policy, and (3) train personnel in the administration of this Policy. Each unit is responsible for obtaining this training for its staff and informing contractors and volunteers of this Policy.

B. Other Relevant University Policies

Because relationship violence, stalking, and sexual misconduct may be forms of unlawful gender discrimination, a member of the University community who violates this Policy may also violate the University's Anti-Discrimination Policy. Other University policies relevant to behavior of a sexual or violent nature by members of the University community include Consensual Amorous or Sexual Relationships With Students, Conflict of Interest in Employment, Article 2.00 of the General Student Regulations, Article 3.00 of the Graduate and Undergraduate Residence Hall Regulations, and Ordinance 22.00.

C. Other Helpful Documents

Other helpful documents that provide additional information about concepts or terminology contained in this Policy or related reporting obligations include:

- Title IX Coordinator Description: https://civilrights.msu.edu/about/index.html
- ADP User’s Manual: www.oie.msu.edu
- University Reporting Protocols: Child Abuse, Sexual Assault, and Child Pornography: https://hr.msu.edu/policies-procedures/university-wide/reporting_protocols.html
D. Online Resources

The Department of Justice’s Office of Violence Against Women maintains a comprehensive website regarding sexual assault, including information about applicable laws, what to do as a victim of sexual assault, confidentiality, and key terms and definitions. The website can be located at www.changingourcampus.org.

XX. Annual Crime Reporting & Timely Warnings

As part of its annual reporting obligations under the Clery Act, the University discloses statistics regarding domestic violence, dating violence, stalking, and sexual assaults that meet the definition of forcible and non-forcible sex offenses under federal law. The statistics include only those Clery crimes that occur on specific geography associated with the University as defined under the Clery Act. The report, the Annual Security and Fire Safety Report, is published every October and is located on the MSU Police Department website at www.police.msu.edu. The publication does not include any personally identifying information about a victim.

The MSU Police Department issues “timely warnings” to the campus community when a Clery crime (1) occurs on campus, in a non-campus building or property (as defined by law), or on public property immediately adjacent to campus and (2) poses a serious or continuing threat to students, employees, or visitors. The method of communication to the campus community will depend on the specifics of the crime reported and the immediacy of the danger to those on campus. Timely warnings do not contain any personally identifying information about the victim.

XXI. Policy History

The Sexual Harassment Policy was issued by the Office of the President on September 1, 1992 and revised in May 1999, January 2011, and June 2011. The Office of the President issued this expanded Relationship Violence & Sexual Misconduct Policy on January 1, 2015. The Policy was revised on September 8, 2015, August 31, 2016, August 30, 2017, January 8, 2018, April 30, 2018, August 31, 2018, February 8, 2019, and January 3, 2020.
XXII. Appendices

Appendix A: Glossary
Appendix B: MSU Police Department Information Forms
Appendix C: Michigan Criminal Statutes
Appendix D: Flow Chart: MSU Center for Survivors Overview
Appendix E: Flow Chart: MSU Safe Place Process Overview
Appendix F: Flow Chart: MSUPD Sexual Assault Investigation Process
Appendix G: Flow Chart: OIE Investigation Process and Time Frame
Appendix H: Description of MSU Sanctions and Discipline
Appendix I: Appeal Procedures

Effective Date: 1/3/20